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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/610,197	07/01/2000	John B. Ferber	08011.3006-00000	6838
22852 7590 04/06/2009 FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413				
			EXAMINER LAFORGIA, CHRISTIAN A	
			ART UNIT 2439	PAPER NUMBER
			MAIL DATE 04/06/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/610,197

**Applicant(s)**

FERBER ET AL.

**Examiner**

Christian LaForgia

**Art Unit**

2439

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-5, 7-20 and 31-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-5 and 7-20 is/are allowed.
- 6) ☒ Claim(s) 31-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 July 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

**DETAILED ACTION**

1. The amendment of 21 January 2009 has been noted and made of record.
2. Claims 2-5, 7-20, and 31-38 have been presented for examination.
3. Claims 1, 6, and 21-30 have been cancelled as per Applicant's request.
4. Claims 2-5 and 7-20 have been indicated as being allowable. The reasons for allowance can be found in the Office Action of 31 March 2005.

***Response to Arguments***

5. Applicant's arguments with respect to the prior art rejections filed 21 January 2009 have been fully considered but they are not persuasive.
6. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).
7. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).
8. See further rejections set forth below.

***Claim Rejections - 35 USC § 103***

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claims 31-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,907,566 B1 to McElfresh et al., hereinafter McElfrish, in view of U.S. Patent Application Publication No. 2002/0072965 A1 to Merriman et al., hereinafter Merriman.

11. As per claim 31, McElfresh teaches a computer-implemented method for optimizing placement of Internet advertisements, comprising:

establishing a customer profile for a customer, the customer profile including category attributes related to a category of advertisements of interest to the customer and product attributes related to a product of interest to the customer (column 2, lines 56-61, column 8, lines 28-67, i.e. gathering information regarding a user and using this information to optimize an ad shown to said user);

receiving an Internet advertisement (Figures 1 [blocks 16, 18, 20], 2 [blocks 44, 46, 48, 50], column 5, lines 27-37, column 5, lines 56-65);

computing a click probability estimate representing a likelihood that the customer will select the Internet advertisement according to the category attributes and the product attributes (column 5, line 56 to column 6, line 14, column 11, lines 10-33, i.e. click through percentage);

presenting the Internet advertisement to the customer based on the click probability estimate (Figure 2 [blocks 44, 46, 48, 50], column 5, lines 56-65);

receiving a response to the Internet advertisement from the customer (column 9, lines 15-28, i.e. collecting performance statistics of the advertisements);

adjusting the click probability estimate for the Internet advertisement based on the received response to the Internet advertisement (column 2, lines 45-55, i.e. gathering data regarding past performance of the advertisements and updating said information when new data is received).

12. McElfresh does not teach determining a strength of the click probability estimate based on a number of times the Internet advertisement has been previously presented and increasing the strength of the click probability estimate based on the presentation of the Internet advertisement.

13. Merriman discloses taking into account the number of times an advertisement has been seen when using targeted advertising (paragraph 0022).

14. It would have been obvious to one of ordinary skill in the art at the time the invention was made to determine a strength of the click probability estimate based on a number of times the Internet advertisement has been previously presented and increase the strength of the click probability estimate based on the presentation of the Internet advertisement, since Merriman states in paragraph 0022 that taking into account the number of times an advertisement has been presented helps accrue information about which users have expressed interest in which advertisements thereby making the targeted advertising more accurate.

15. Regarding claim 32, McElfresh teaches adjusting the customer profile based on types of advertisements previously responded to by the customer (column 6, lines 27-48, column 7, lines 33-60, column 8, lines 28-54).

16. Regarding claim 33, McElfresh teaches adjusting the customer profile based on Internet sites visited by the customer (column 6, lines 27-48, column 7, lines 33-60, column 8, lines 28-54).

17. Regarding claim 34, Merriman teaches wherein the strength of the click probability estimate represents an uncertainty of the click probability estimate (paragraph 0022).

18. With regards to claim 35, Merriman teaches increasing the strength of the click probability estimate by reducing the uncertainty of the click probability estimate (paragraph 0022).

19. Regarding claim 36, McElfresh teaches wherein the responses is a click selecting the Internet advertisement (column 3, line 65 to column 4, line 16, i.e. gathering performance information regarding the advertisements performance includes if the user clicked on the ad).

20. Regarding claim 37, McElfresh teaches wherein the response is a request for more information (column 3, line 65 to column 4, line 16, i.e. gathering performance information regarding the advertisements performance includes if the user requested more information).

21. Regarding claim 38, McElfresh teaches wherein the response is a purchase of an item (column 3, line 65 to column 4, line 16, i.e. gathering performance information regarding the advertisements performance includes if the user made a purchase).

*Conclusion*

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

23. The following patents are cited to further show the state of the art with respect to targeted advertising, such as:

United States Patent No. 5,636,346 to Saxe, which is cited to show a method for selectively targeting advertisements.

24. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

25. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

26. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christian LaForgia whose telephone number is (571)272-3792. The examiner can normally be reached on Monday thru Thursday 7-5.

27. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Zand can be reached on (571) 272-3811. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

28. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christian LaForgia/  
Primary Examiner, Art Unit 2439

clf